



Income Tax Update

News and developments for tax practitioners


A publication of the Tax Administration Division

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Property tax relief program update for 2008 income tax year

Eligible property taxes for 2008 income tax year

The 2008 income tax year is the second year of the two-year property tax relief program created by the 2007 North Dakota Legislature. For purposes of the 2008 income tax return, the 2007 real estate

tax and the 2008 mobile home tax that became due in the 2008 calendar year must be used. The 2007 real estate tax became due on January 1, 2008, and the 2008 mobile home tax became due on January 10, 2008. In the case where a mobile home is purchased or moved into North Dakota during the year, the mobile home tax is due on the 10th day after the date of purchase or move, and to qualify that date must fall in 2008. 

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Common questions and problems addressed

Following are the more common questions and problems encountered with respect to the property tax relief income tax credits.

Property classification—Many taxpayers did not know whether they had residential, agricultural, or commercial property. The classification is not shown on the property tax statement issued by the county to the property owner. The classification is based on how the property is classified by the county for property tax purposes. Its classification is not necessarily based on its location or use. For example, an apartment building having up to three apartment units is classified as residential. However, an apartment building having four or more apartment units is classified as commercial, regardless of its location or use. See “Parcel

lookup feature added to Tax Department web site” later in this newsletter for a new tool that tax preparers can use to find out how a given parcel of property is classified by the county.

Property transfers—One of the more confusing situations is one in which a parcel of property is transferred from one taxpayer to another. Which taxpayer—the seller or the buyer— is entitled to claim the property taxes on the transferred property for purposes of the income tax credits? The answer is the taxpayer who owns the property on the due date of the eligible property taxes. Further, this applies regardless of whether the seller or buyer actually pays the eligible property taxes.



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If property is leased, only the property's owner may claim the property taxes for purposes of the income tax credits.

Example: Taxpayer A sells his home (Home 1) to Taxpayer B on August 1, 2007. Because Taxpayer B will own the home on January 1, 2008, Taxpayer B may claim all of the 2007 real estate tax on the home in computing the residential property income tax credit on his 2008 North Dakota income tax return. This applies even if Taxpayer A paid a prorata share of the 2007 real estate tax for the first seven months of 2007 (January through July) to Taxpayer B. Taxpayer A may not claim any of the 2007 real estate tax that he paid to Taxpayer B to compute a residential property income tax credit. If Taxpayer A buys another North Dakota home (Home 2) before the end of 2007, Taxpayer A may claim all of the 2007 real estate tax on Home 2 in computing the residential property income tax credit on his 2008 North Dakota income tax return.

Leased (or rented) property—If property is leased, only the property's owner may claim the property taxes for purposes of the income tax credits. The lessee may not claim the credit, even if the lessee agrees as part of the lease contract to pay the property taxes owed by the owner.

Life estate—Another situation involves parents who transfer the deed to their home to one of their children but retain a life estate in the home. By doing so, the parents continue to live in the home with all rights and obligations of ownership until their death, at which time all ownership rights then pass to the child. In this case, the life estate holder (parents) may claim the property taxes on the home in computing the income tax credit.

Grantor-type trust—Generally, property taxes on property placed in a trust are not eligible for the income tax credits. There is one exception in the case of a "grantor-type trust," as defined for federal income tax purposes (I.R.C. §§ 671-679). In general, this is a trust over which the grantor—that is, the person who places the property in the trust—retains sufficient power to revoke or control the trust, in which case the grantor (and not the trust) is considered the owner of the property in the trust for federal income tax purposes. In this case, the grantor may use the property taxes on the property in the trust for purposes of computing the income tax credits on the grantor's income tax return.

Property or parcel number—One of the more common errors on the 2007 North Dakota income tax returns involved the property or parcel number required to be entered on Schedule PT, the supplemental schedule to Form ND-1 and Form ND-2 on which the credits are calculated. Each county has its own numbering system to assign a number to each parcel of property within the county. The Tax Department uses this number to verify eligibility for the credit by comparing it to the numbers provided by the counties to the Tax Department. Because this number often consists of a long series of numbers and letters, care must be taken in entering the number on the return.


For other special situations, go to the Office of State Tax Commissioner's web site at www.nd.gov/tax and click on Property Tax Relief on the left-hand side of the page. 

Procedure for carrying over unused 2007 property tax relief credit

Two new lines have been added to the 2008 Form ND-1 on which to enter the amount of an unused 2007 property tax relief income tax credit. Line 21a was added for an unused 2007 residential and agricultural property tax credit, and line 21b was added for an unused 2007 commercial property tax credit. On the 2008 Form ND-2, the unused credits are to be entered on page 1, line 4 (Other credits).

Do not enter any unused 2007 credit on Schedule PT.

Important: In the case of an unused 2007 residential and agricultural property credit, if an individual elected to receive a 2007 Property Tax Relief Certificate for the amount of the unused credit, the unused credit should **not** be entered anywhere on the 2008 return.

In the case of a "C" corporation, an unused 2007 commercial property tax credit is to be entered on the 2008 Form 40, Schedule TC, line 21. **Do not enter any unused 2007 credit on the 2008 Form 40-PT.** 

Parcel lookup feature on Tax Department web site

One of the problems tax preparers encountered in preparing 2007 income tax returns involved clients not providing their 2006 property tax statements, which were needed to compute the property tax relief income tax credits. Clients may not have kept their statements, couldn't find them, or simply

forgot to provide them. This resulted in an inconvenience to the client or tax preparer, and to counties responding to requests for property tax information. To help address this situation, a new parcel lookup feature has been added to the Tax Department's web site that allows anyone to search the database of property tax information provided electronically by the counties to the Tax Department. A search can be done by name, parcel number, or county.

As of this writing, the 2006 property tax information is provided in the database. Watch for the addition of the 2007 property tax information that will be added in early January 2009. For each parcel in the database, the following information is provided:

- Owner's name
- Parcel number (assigned by the county)
- Property classification
- County's 3-digit code number (assigned by the Tax Department)
- Consolidated tax amount
- Indicator whether the tax has been paid ("Yes") or has not been paid ("No")

While the Tax Department has worked closely with the counties to provide accurate and up-to-date information, please keep the following points in mind when using the parcel search tool:

- Due to property sales and transfers, the time it takes to update county files, etc., county property records do not always contain the most up-to-date information. Therefore, in some cases, the information in the database may be inaccurate.
- For the 2006 real estate tax information, the name of the owner shown for each parcel is the name of the owner as recorded by the county **at the end of the 2007 calendar year**. When the 2007 real estate tax information is added, it will show the name of the owner of each parcel **as of the end of the 2008 calendar year**. This is important because the listed owner may not be the taxpayer who is eligible to claim the real estate tax to compute the property tax credit. Therefore, unless it is known that a taxpayer owned a particular parcel on the due date of the real estate tax in question, it will be necessary to inquire if the taxpayer was the owner on the applicable due date. For the applicable due dates for the 2006 and 2007 real estate taxes, see the instructions to the 2007 and 2008 North Dakota income tax returns, respectively.

To access the parcel search feature, go to the Tax Department's web site at www.nd.gov/tax and click on **Property Tax Relief > Property Tax Parcel Search** 

Reminders for corporate taxpayers

Some corporations did not claim the commercial property income tax credit

The Tax Department has observed that some corporations that filed the 2007 North Dakota Form 40 did not claim the commercial property income tax credit even though they owned North Dakota commercial real estate. A corporation is eligible for the commercial property income tax credit for the 2007 tax year if the corporation:


1. Owned real estate (including a mobile home) located in North Dakota that is classified as commercial for property tax purposes; and
2. Was liable for and paid the **2006 real estate tax** (or the **2007 mobile home tax**) on the North Dakota commercial real estate (or mobile home).

The credit is equal to 10 percent of the real estate tax (or mobile home tax) before adding special assessments and before subtracting any discount, up to a maximum credit of \$1,000. The credit is computed on the 2007 Form 40-PT, a supplemental form to the 2007 Form 40. In the case of a consolidated North Dakota Form 40, this credit (and its \$1,000 maximum credit amount) is available to each corporation with eligible property included in the consolidated return.


Due to property sales and transfers, the time it takes to update county files, etc., county property records do not always contain the most up-to-date information.

In the case where a federal extension is not obtained and a North Dakota extension is obtained, a copy of the approved North Dakota extension must be attached to the North Dakota return.

In addition, if a corporation owned an interest in a partnership or limited liability company (treated like a partnership) that owned commercial property located in North Dakota for which the partnership was liable for the **2006 real estate tax** (or **2007 mobile home tax**), the corporation may include its share of the partnership's eligible property taxes in the credit calculation.

If a corporation is eligible for the credit but did not claim it on its 2007 North Dakota Form 40, it may file an amended return consisting of Form 40-X and the 2007 Form 40-PT. 

Please observe formal extension procedures


While it is not the most important item on the return, proper completion of the North Dakota corporation income tax return includes observing the formal procedures to indicate that an extension of time to file applies. While an extension of time to file the federal corporation income tax return is automatically accepted by North Dakota as an extension of time to file the North Dakota income tax return, a copy of the federal extension form, Form 7004, still must be attached to the North Dakota return. In the case where a federal extension is not obtained but a North Dakota extension is obtained, a copy of the approved North Dakota extension must be attached to the North Dakota return. And regardless of the kind of extension obtained, the extension box on the front of Form 40 must be checked. By observing these nuts and bolts of preparing the return, both the corporation and the Tax Department are saved the inconvenience of unnecessary late notices and the time to handle them. 

Marriage penalty tax credit update


Changes for 2008 tax year

On the 2008 Form ND-1, the calculation of the marriage penalty credit for married individuals filing jointly was changed as follows:

- The amount allowed as a deduction in calculating the taxable income of the spouse with the lower earned income was increased to \$8,950. This number is made up of one personal exemption and one-half of the standard deduction for married persons filing jointly, which for 2008 equal \$3,500 and \$5,450, respectively.
- The maximum credit allowed was increased to \$305 as a result of indexing for inflation.
- The joint North Dakota taxable income threshold was increased to \$54,454. Below this amount a credit of less than \$1.00 is generated.
- The earned income threshold of the spouse with the lower earned income was increased to \$30,854. Below this amount no credit is generated.

These changes have been incorporated into the calculation worksheet included in the instructions to the 2008 Form ND-1. This credit is not allowed on Form ND-2. 


Not all joint filers receive the marriage penalty tax credit

The 2007 tax year was the first year the marriage penalty tax credit was allowed to joint filers on Form ND-1. Some married taxpayers who filed a joint 2007 return have asked why they did not qualify for this credit. The calculation of the credit is prescribed by statute, which sets out a calculation method intended to keep the calculation reasonably simple and to allow for consistent application. Whether or not the calculation generates a credit will depend on how the couple's fact situation fits into the statutorily-prescribed calculation. The North Dakota taxable income and earned income thresholds shown in the instructions to Form ND-1 only serve to show the amounts below which the prescribed calculation will not generate a credit of at least \$1.00. The problem of the "marriage penalty" has a long history and has been difficult to address from both a practical and political point of view. In many cases, too, a "marriage penalty" does not exist on a joint return filed by married persons; instead, there is a "marriage bonus" because the tax on a joint return is less than the combined taxes on single returns. 


Ordering 2008 income tax forms

Not surprisingly, the printing of paper forms by the North Dakota Tax Department continues to decline. The use of computers and commercially available tax return software, and the printing of forms from the IRS's and state revenue agencies' web sites, is now the norm. The number of electronically filed 2007 North Dakota individual income tax returns reached approximately 205,077 as of November 28th, 2008, which is 60 percent of the total number of returns processed by that date.


Enclosed is the order form for 2008 income tax forms and instructions. All of the forms shown on the order form are as close as your PC's printer, where you can get them 24 hours a day, 7 days a week by printing them from the North Dakota Tax Department's web site at www.nd.gov/tax. If you do use the order form to request paper forms, please note that quantities are limited.

Note: Orders for forms will be filled later than usual this year, early January, due to a delay in printing some forms. The delay is a direct result of waiting for the outcome of an initiated measure on income tax rate cuts and a statutorily-mandated determination of total property tax relief income tax credits claimed for 2007, both of which occurred in November 2008. The mailing of the 2008 individual income tax booklets will also be later than usual because of the property tax relief credit determination. 

Cutback in mailing of 2009 estimated tax forms to individuals

In past years, if an individual made one or more estimated North Dakota income tax payments for a tax year, an estimated tax form package—consisting of Form 400-ES, four payment envelopes, and instructions— was automatically mailed to the individual for the following tax year. However, in recent years, most individuals have not used the vouchers mailed to them by the Tax Department to make their estimated payments. Instead, they have used a voucher printed from the Tax Department's web site or provided to them by their tax preparer. Starting with the 2009 estimated tax form package to be mailed in early 2009, the automatic mailing will only go to those individuals who used the 2008 estimated tax payment voucher that was mailed to them by the Tax Department. 


National Guard or Reserve member deduction clarified

A change was made to the instructions to Form ND-1 and Form ND-2 covering the deduction allowed to a National Guard or U.S. armed forces reserve member entering federal active duty. The change clarifies that the deduction is allowed regardless of whether the member is involuntarily ordered to such duty or the member volunteers for such duty. In either case, the member will receive orders reflecting that the service is under Title 10 of the U.S. Code. The deduction is not allowed for service under Title 32 of the U.S. Code, which is service under the command of the governor and adjutant general. The deduction also is not allowed if the compensation is received for attending basic military training, annual training, or professional military training or developmental education. 

New income exclusion for eligible employees


An individual is eligible for an income exclusion—called the employee workforce recruitment exclusion— if both of the following conditions are met:

1. The individual's employment qualifies the individual's employer for the workforce recruitment income tax credit.
2. The employer provides the individual with a statement verifying the employer's eligibility for the workforce recruitment income tax credit and identifying the excludable income, which must consist of a hiring bonus, moving expense payment, or a nontypical fringe benefit.

For details about the workforce recruitment income tax credit, see the instructions to the 2008 Schedule ND-1TC, line 13, or the 2008 Form 40, Schedule TC, line 20. 

The use of computers and commercially available tax return software, and the printing of forms from the IRS's and state revenue agencies' websites, is now the norm.

Shorter federal extension period for partnership and fiduciary returns recognized

On July 1, 2008, the Treasury Department and the IRS issued Treasury Decision 9407, in which temporary regulations were adopted that provide for a five-month automatic extension period with no additional extension for certain pass-through entities. These entities are partnerships (Form 1065) and estates and trusts (Form 1041). This new automatic extension period applies to returns having a due date on or after January 1, 2009. There are some exceptions in which a six-month automatic extension is still available. For details, see Treas. Reg. §§ 1.6081-2T and 1.6081-6T. As a matter of long-standing administrative policy, North Dakota automatically recognizes a federal extension of time to file for North Dakota income tax purposes, and therefore follows the new federal five-month extension period if applicable. 


New taxpayer assistance phone numbers

The phone numbers for taxpayer assistance have changed. Please note them for future reference. If calling from outside North Dakota, use area code 701.

Toll-free (in North Dakota)	1-877-328-7088
General (<i>from Bismarck-Mandan area, or from outside North Dakota</i>)	328-7088
Tax form requests—all taxes	328-1243
<i>Copy of previously filed return</i>	
<i>Blank tax forms and instructions</i>	
Business registration	328-1241
<i>Address changes</i>	<i>Canadian refund inquiries</i>
<i>Contractor clearances</i>	<i>Good standing certificates (general business purpose)</i>
Collections (tax due and collection matters).....	328-1244
<i>Statements of tax due</i>	<i>Offers-in-compromise</i>
<i>Liens</i>	<i>Other collection matters</i>
Taxpayer services—all taxes.....	328-1242
<i>Correction notices (except for C corporations)</i>	
<i>Calculation worksheets</i>	
<i>Refund inquiries (except Canadians' sales tax refunds and fuel tax refunds)</i>	
<i>Tax Department request for information letters</i>	
Individual Income Tax Section	328-1247
<i>Individual income tax questions</i>	
<i>Estate or trust income tax questions</i>	
<i>Partnership or S corporation income tax questions</i>	
<i>Renaissance zone certificate of good standing requests</i>	
Income tax withholding (for employers)	328-1248
Corporation Income Tax Section	328-1249
<i>All corporation income tax matters (except for S corporations)</i>	
<i>Financial institution tax questions</i>	
Sales & Special Taxes Compliance Section.....	328-1246
<i>State and local sales and use tax questions</i>	
<i>Restaurant & lodging tax questions</i>	
<i>Alcohol, cigarette & tobacco tax questions</i>	
<i>Sales tax exemption certificate inquiries</i>	

A change was made to the instructions to Form ND-1 and Form ND-2 covering the deduction allowed to a National Guard or U.S. armed forces reserve member entering federal active duty.

Motor fuels, oil and gas taxes	328-3126
<i>Motor vehicle, aviation & special fuels tax questions</i>	
<i>Gross production & oil extraction tax questions</i>	
<i>Fuel tax refund inquiries</i>	
<i>Estate tax</i>	
Property tax	328-3127
<i>Renter's refund inquiries</i>	
<i>State Board of Equalization inquiries</i>	

Individuals needing help due to speech or hearing impairment may continue to call Relay North Dakota at 1-800-366-6888, and then ask for one of the above numbers. 

New mailing addresses for certain returns and payments

Different mailing addresses have been set up for certain returns and payments submitted to the Tax Department. Use of the envelopes provided by the Tax Department is encouraged. But if a non-Tax Department envelope is used to submit a return or payment, please use the applicable address below, which helps the Tax Department's handling of mail.

	Mail to:
	Office of State Tax Commissioner
	at—
Return or payment voucher	
Form ND-1, Form ND-2, and Form ND-3	PO Box 5621 Bismarck ND 58506-5621
Form 400-ES, Form 400-EXT, and Form ND-1V payment vouchers	PO Box 5622 Bismarck ND 58506-5622
Form 306 or Form 307	PO Box 5624 Bismarck ND 58506-5624
Form ST, Form F10, and Sales Tax Webfile payment voucher	PO Box 5623 Bismarck ND 58506-5623
Application for Sales Tax Refund (Canadians)	PO Box 5527 Bismarck ND 58506-5527
All other forms, payments, and correspondence	600 E Blvd Ave Dept 127 Bismarck ND 58505-0599

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This newsletter is available free of charge on the Department's web site at www.nd.gov/tax or in hard copy. An e-mail notification service is available that notifies subscribers when a new issue is placed on the Department's web site. To be added to the notification list, go to the Department's web site and click on "Newsletters Subscription" located on the right side of the blue bar at the top of the home page. To receive a hard copy of the newsletter, call (701)328-2770 and ask to be placed on the tax practitioner income tax newsletter mailing list.



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